

Office of Government Ethics

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Letter to a Director of a Private Organization dated August 5, 1982

The Director of the Office of Personnel Management has asked me to respond to your July 12, 1982 letter to him regarding the reporting of Government pensions under the Ethics in Government Act by persons now serving the Government in another capacity. The Office of Government Ethics which is administratively attached to the Office of Personnel Management is responsible for interpreting and administering the public financial disclosure requirements which apply to the officers and employees of the executive branch. It is our Office which, therefore, has interpreted the statutory requirements regarding the disclosure of Federal civil service and military pensions by officers and employees in the executive branch and has set the standards for all Departments and agencies within the executive branch to follow, including the State Department, NASA and DoD.

Neither the Office of Personnel Management nor the Office of Government Ethics ("OGE") interprets those sections of the Ethics in Government Act ("the Act") requiring public financial disclosure by persons in the legislative or judicial branches of Government. Consequently, I am not able to respond to those aspects of your letter.

Section 202(a)(1)(A) of Title II of the Act states that each public financial report required to be filed by officers and employees of the executive branch shall include:

The source, type, and amount or value of income (other than income referred to in subparagraph (B)), [i.e., dividends, rents, interest, and capital gains] from any source (other than from current employment by the United States Government) (Emphasis added.)

Congress wrote this section broadly and, therefore, it is interpreted to require the reporting of all items such as earned income, pensions, unemployment payments, social security payments and partnership income. The only exception stated in the statute is income from current employment by the United States Government. Therefore, an individual in the executive branch who

is required to file a public financial disclosure report need not report his or her current Government salary. If, however, this individual is a re-employed civil service annuitant, he or she must report the annuity or pension income because it is not income from current Government service.

A retired military officer who is now employed in the executive branch need not report his or her military retirement income because such retirement pay is considered "reduced compensation for reduced current services." This characterization of a retired military officer's "pension" was most recently endorsed in a recent Supreme Court case, *McCarty v. McCarty*, 453 U.S. 210, 222 (1981). The opinion also sets forth the rationale for such a conclusion and it need not be repeated here. Given this characterization of military retirement pay, OGE has determined that it falls within the stated exception in the statute.

In addition, because military retirement pay constitutes "reduced compensation for reduced current services," the employment of a retired officer in a civilian position does not violate 5 U.S.C. § 5533 as you have suggested. Section 5533(a) states in part that "an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday)." (Emphasis added.) A "position" is defined in 5 U.S.C. § 5531 (2) as "a civilian office or position . . . in the legislative, executive, or judicial branch of the Government" (Emphasis added.) Therefore, section 5533(a) prohibits the holding of two civilian positions; it does not prohibit the holding of a retired military position and a civilian position. You will note that this subchapter specifically addresses the holding of a retired military position and a civilian position in section 5532 and does so in terms of how the retirement pay is to be adjusted, not in terms of the two positions being prohibited.

Should you have any additional questions concerning the administration of the Ethics in Government Act of 1978 in the executive branch, you may wish to direct them to this Office.

Sincerely,

J. Jackson Walter
Director